

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**In re: Pharmaceutical Industry Average  
Wholesale Price Litigation**

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)  
) MDL No. 1456  
)

**This Document Relates to:**

) Civil Action No. 01-12257-PBS  
)

*U.S. ex rel. West v. Ortho-McNeil  
Pharmaceutical, Inc. et al.*, No. 03-8239  
(N.D. Ill.)

) Hon. Patti B. Saris  
)  
)  
)

**MOTION FOR LEAVE TO FILE OUT OF TIME**

COMES NOW, Relator Ed West, by his counsel of record, and for his Motion for Leave to File Out of Time, states as follows:

1. On April 2, 2008, Defendant Ortho-McNeil Pharmaceutical, Inc. filed a Motion to Dismiss West's Claim for "Marketing the Spread to Hospitals" and a Memorandum in Support [documents 5189 and 5190 respectively] ("Motion to Dismiss").
2. Pursuant to Local Rule 7.1(b)(2), Relator's Response in Opposition to the Motion to Dismiss ("Opposition") was due on April 16, 2008.
3. On Relator's Unopposed Motion for Extension of Time [document 5215], this Court granted Relator until April 30, 2008 to file his Opposition.
4. Pursuant to Local Rule 5.4(D), Relator's Opposition should have been filed by 6:00pm EDT on April 30, 2008.
5. Relator seeks leave from this Court to file his Opposition out of time. Relator's counsel unintentionally failed to file the Opposition by the required time and meant no offense to the

Court thereby. Relator's counsel will file this Motion and the Opposition by midnight central time.

6. Defendant will not be prejudiced in any manner by the untimely filing of the Opposition. Relator will be severely prejudiced if the Opposition is not filed.

7. Due to the time constraints and the late hour of filing, Relator has not been able to confer with Defendant's counsel regarding their position on this Motion.

8. The Opposition is attached hereto. Relator respectfully requests that the Court allow the Opposition to be filed and instruct the Court Clerk to file the Opposition.

WHEREFORE, Relator respectfully prays this Court enter its Order granting Relator's Motion for Leave to File Out of Time, ordering that Relator's Opposition shall be filed, instructing the Court Clerk to file Relator's Opposition, and for such further orders and relief as this Court deems just.

Respectfully submitted,

SIMMONSCOOPER LLC

By: /s/John A. Bruegger  
John A. Bruegger - #6278821  
Kenneth J. Brennan  
707 Berkshire Blvd.  
East Alton, Illinois 62024  
(618) 259-2222 ~ Ext. 506  
(618) 259-2251 ~ Fax  
Email: [jbruegger@simmonscooper.com](mailto:jbruegger@simmonscooper.com)

George A. Zelcs - #3123738  
KOREIN TILLERY  
205 North Michigan Ave.  
Chicago, Illinois 60601  
(312) 641-9750 tel  
(312) 641-9751 fax  
Email: [gzelcs@koreintillery.com](mailto:gzelcs@koreintillery.com)

Donald M. Flack  
KOREIN TILLERY  
505 North 7<sup>th</sup> Street, Suite 3600  
St. Louis, Missouri 63101  
(314) 241-4844  
(314) 241-3525 ~ Fax  
[dflack@koreintillery.com](mailto:dflack@koreintillery.com)

ATTORNEYS FOR RELATOR

**CERTIFICATE OF SERVICE**

John A. Bruegger, an attorney, hereby certifies that on May 1, 2008, he electronically filed the foregoing documents with the Clerk of the Court for the District of Massachusetts using the court's CM/ECF system.

A copy of the foregoing also has been served on May 1, 2008 on the following individuals by depositing a copy in the U.S. mail, first-class postage pre-paid:

Scott R. Lassar  
Sidley Austin LLP  
One S. Dearborn Street  
Chicago, IL 60603

Scott D. Stein  
Sidley Austin LLP  
One S. Dearborn Street  
Chicago, IL 60603

Jordan S. Ginsberg  
Sidley Austin LLP  
One S. Dearborn Street  
Chicago, IL 60603

George A. Zelcs  
Korein Tillery, LLC  
205 N. Michigan Plaza  
Suite 1950  
Chicago, IL 60601

Samuel S. Miller  
United States Attorney's Office  
219 South Dearborn Street  
Suite 500  
Chicago, IL 60604

Mary Louise Cohen  
Phillips & Cohen LLP  
2000 Massachusetts Ave., N.W.  
Washington, DC 20036

Erika A. Kelton  
Phillips & Cohen LLP  
2000 Massachusetts Ave., N.W.  
Washington, DC 20036

Timothy D. Nimrod  
Gregory Hooggasian, Esq.  
Medicaid Fraud Control Unit  
100 W. Randolph St.  
12<sup>th</sup> Floor  
Chicago, IL 60601

Lisa Madigan  
Attorney General of Illinois  
100 West Randolph Street  
12<sup>th</sup> Floor  
Chicago, IL 60601

Charles J. Crist, Jr.  
The Capitol PL-01  
Tallahassee, FL 32399-1050

M Jane Brady  
Carvel State Office Building  
Consumer Protection-5<sup>th</sup> Floor  
820 North French Street  
Wilmington, DE 19801

Collin Wong  
Bureau of Medi-Cal Fraud  
Office of the Attorney General  
1425 River Park Drive  
Ste. 300  
Sacramento, CA 95815

L Timothy Terry  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

Randall L. Clouse  
Medicaid Fraud Control Unit  
900 East Main St.  
5<sup>th</sup> Floor  
Richmond, VA 23219

Steven Fermon  
Medicaid Fraud Control Unit Illinois State Police  
200 Isles Park Place  
Ste. 230

Springfield, IL 62703

Robert Spagnoletti  
District of Columbia Attorney's Office  
Office of Corporation Counsel  
441 4<sup>th</sup> St., NW  
Washington, DC 20001

W Rick Copeland  
Medicaid Fraud Control Unit  
Office of the Attorney General  
Austin, TX 78711

Jerry Kilgore  
Virginia Attorney General  
Office of the Attorney General  
900 E. Main St.  
5<sup>th</sup> Floor  
Richmond, VA 23219

Susan Kennedy  
Medicaid Fraud Control Unit  
Office of DC Inspector General  
Washington, DC 20005

Robert Schlafly  
Medicaid Fraud Control Unit Bureau of Investigations  
901 R.S. Gass Blvd.  
Nashville, TN 37216

Paul G. Summers  
Tennessee Attorney General  
500 Charlotte Avenue  
Nashville, TN 37243

Bill Lockyear  
Office of the Attorney General  
1300 I Street  
Ste. 1740  
Sacramento, CA 95814

Gary K. Senega  
Deputy Attorney General State of Hawaii  
333 Queen Street  
10<sup>th</sup> Floor

Honolulu, HI 96813

Greg Abbott  
Texas Attorney General  
Office of the Attorney General  
Capital Station, PO BOX 12548  
Austin, TX 78711

/s/ John A. Bruegger